

111TH CONGRESS
1ST SESSION

S. 313

To resolve water rights claims of the White Mountain Apache Tribe in the State of Arizona, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2009

Mr. KYL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To resolve water rights claims of the White Mountain Apache Tribe in the State of Arizona, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “White Mountain
5 Apache Tribe Water Rights Quantification Act of 2009”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) proceedings to determine the nature and ex-
9 tent of the water rights of the White Mountain

1 Apache Tribe, members of the Tribe, the United
2 States, and other claimants are pending in—

3 (A) the consolidated civil action in the Su-
4 perior Court of the State of Arizona for the
5 County of Maricopa styled In re the General
6 Adjudication of All Rights To Use Water In
7 The Gila River System and Source, W-1 (Salt),
8 W-2 (Verde), W-3 (Upper Gila), W-4 (San
9 Pedro); and

10 (B) the civil action pending in the Superior
11 Court of the State of Arizona for the County of
12 Apache styled In re the General Adjudication of
13 All Rights to Use Water in the Little Colorado
14 River System and Source and numbered CIV-
15 6417;

16 (2) a final resolution of those proceedings
17 might—

18 (A) take many years;

19 (B) entail great expense;

20 (C) prolong uncertainty concerning the
21 availability of water supplies; and

22 (D) seriously impair the long-term eco-
23 nomic well-being of all parties to the pro-
24 ceedings;

1 (3) the Tribe, non-Indian communities located
2 near the reservation of the Tribe, and other Arizona
3 water users have agreed—

4 (A) to permanently quantify the water
5 rights of the Tribe, members of the Tribe, and
6 the United States in its capacity as trustee for
7 the Tribe and members in accordance with the
8 Agreement; and

9 (B) to seek funding, in accordance with
10 applicable law, for the implementation of the
11 Agreement;

12 (4) it is the policy of the United States to quan-
13 tify, to the maximum extent practicable, water rights
14 claims of Indian tribes without lengthy and costly
15 litigation;

16 (5) as of the date of enactment of this Act, the
17 tribal water rights are unquantified vested property
18 rights held in trust by the United States for the ben-
19 efit of the Tribe; and

20 (6) in keeping with the trust responsibility of
21 the United States to Indian tribes, and to promote
22 tribal sovereignty and economic self-sufficiency, it is
23 appropriate that the United States participate in
24 and contribute funds for the implementation of the
25 Agreement.

1 (b) PURPOSES.—The purposes of this Act are—

2 (1) to authorize, ratify, and confirm the Agree-
3 ment;

4 (2) to authorize and direct the Secretary to exe-
5 cute the Agreement and carry out all obligations of
6 the Secretary under the Agreement;

7 (3) to authorize the actions and appropriations
8 necessary for the United States to meet the obliga-
9 tions of the United States under the Agreement and
10 this Act; and

11 (4) to permanently resolve certain damage
12 claims and all water rights claims among—

13 (A) the Tribe and its members;

14 (B) the United States in its capacity as
15 trustee for the Tribe and its members;

16 (C) the parties to the Agreement; and

17 (D) all other claimants in the proceedings
18 referred to in subsection (a)(1).

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) AGREEMENT.—The “Agreement” means—

22 (A) the WMAT Water Rights Quantifica-
23 tion Agreement dated January 13, 2009; and

1 (B) any amendment or exhibit (including
2 exhibit amendments) to that agreement that
3 are—

4 (i) made in accordance with this Act;

5 or

6 (ii) otherwise approved by the Sec-
7 retary.

8 (2) BUREAU.—The term “Bureau” means the
9 Bureau of Reclamation.

10 (3) CAP.—The term “CAP” means the rec-
11 lamation project authorized and constructed by the
12 United States in accordance with title III of the Col-
13 orado River Basin Project Act (43 U.S.C. 1521 et
14 seq.).

15 (4) CAP CONTRACTOR.—The term “CAP con-
16 tractor” means an individual or entity that has en-
17 tered into a long-term contract (as that term is used
18 in the repayment stipulation) with the United States
19 for delivery of water through the CAP system.

20 (5) CAP FIXED OM&R CHARGE.—The term
21 “CAP fixed OM&R charge” has the meaning given
22 the term in the repayment stipulation.

23 (6) CAP M&I PRIORITY WATER.—The term
24 “CAP M&I priority water” means the CAP water

1 having a municipal and industrial delivery priority
2 under the repayment contract.

3 (7) CAP SUBCONTRACTOR.—The term “CAP
4 subcontractor” means an individual or entity that
5 has entered into a long-term subcontract (as that
6 term is used in the repayment stipulation) with the
7 United States and the District for the delivery of
8 water through the CAP system.

9 (8) CAP SYSTEM.—The term “CAP system”
10 means—

11 (A) the Mark Wilmer Pumping Plant;

12 (B) the Hayden-Rhodes Aqueduct;

13 (C) the Fannin-McFarland Aqueduct;

14 (D) the Tucson Aqueduct;

15 (E) any pumping plant or appurtenant
16 works of a feature described in any of subpara-
17 graphs (A) through (D); and

18 (F) any extension of, addition to, or re-
19 placement for a feature described in any of sub-
20 paragraphs (A) through (E).

21 (9) CAP WATER.—The term “CAP water”
22 means “Project Water” (as that term is defined in
23 the repayment stipulation).

24 (10) CONTRACT.—The term “Contract”
25 means—

1 (A) the contract between the Tribe and the
 2 United States attached as exhibit 7.1 to the
 3 Agreement and numbered 08-XX-30-W0529
 4 and dated **【_____】**; and

5 (B) any amendments to that contract.

6 (11) DISTRICT.—The term “District” means
 7 the Central Arizona Water Conservation District, a
 8 political subdivision of the State that is the con-
 9 tractor under the repayment contract.

10 (12) ENFORCEABILITY DATE.—The term “en-
 11 forceability date” means the date described in sec-
 12 tion 12(c)(1).

13 (13) INJURY TO WATER RIGHTS.—

14 (A) IN GENERAL.—The term “injury to
 15 water rights” means an interference with, dimi-
 16 nution of, or deprivation of, a water right under
 17 Federal, State, or other law.

18 (B) INCLUSIONS.—The term “injury to
 19 water rights” includes—

20 (i) a change in the groundwater table;

21 and

22 (ii) any effect of such a change.

23 (C) EXCLUSION.—The term “injury to
 24 water rights” does not include any injury to
 25 water quality.

1 (14) OFF-RESERVATION TRUST LAND.—The
2 term “off-reservation trust land” means land—

3 (A) located outside the exterior boundaries
4 of the reservation that is held in trust by the
5 United States for the benefit of the Tribe as of
6 the enforceability date; and

7 (B) depicted on the map attached to the
8 Agreement as exhibit 2.57.

9 (15) OPERATING AGENCY.—The term “Oper-
10 ating Agency” means the 1 or more entities author-
11 ized to assume responsibility for the care, operation,
12 maintenance, and replacement of the CAP system.

13 (16) REPAYMENT CONTRACT.—The term “re-
14 payment contract” means—

15 (A) the contract between the United States
16 and the District for delivery of water and re-
17 payment of the costs of the CAP, numbered
18 14-06-W-245 (Amendment No. 1), and dated
19 December 1, 1988; and

20 (B) any amendment to, or revision of, that
21 contract.

22 (17) REPAYMENT STIPULATION.—The term
23 “repayment stipulation” means the stipulated judg-
24 ment and the stipulation for judgment (including
25 any exhibits to those documents) entered on Novem-

ber 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95–625–TUC–WDB (EHC) and CIV 95–1720–PHX–EHC.

(18) RESERVATION.—

(A) IN GENERAL.—The term “reservation” means the land within the exterior boundary of the White Mountain Indian Reservation established by the Executive order dated November 9, 1871, as modified by subsequent Executive orders and Acts of Congress—

(i) known on the date of enactment of this Act as the “Fort Apache Reservation” pursuant to the Act of June 7, 1897 (30 Stat. 62, chapter 3); and

(ii) generally depicted on the map attached to the Agreement as exhibit 2.81.

(B) NO EFFECT ON DISPUTE OR AS ADMISSION.—The depiction of the reservation described in subparagraph (A)(ii) shall not—

(i) be used to affect any dispute between the Tribe and the United States

1 concerning the legal boundary of the res-
2 ervation; and

3 (ii) constitute an admission by the
4 Tribe with regard to any dispute between
5 the Tribe and the United States con-
6 cerning the legal boundary of the reserva-
7 tion.

8 (19) SECRETARY.—The term “Secretary”
9 means the Secretary of the Interior.

10 (20) STATE.—The term “State” means the
11 State of Arizona.

12 (21) TRIBAL CAP WATER.—The term “tribal
13 CAP water” means the CAP water to which the
14 Tribe is entitled pursuant to the Contract.

15 (22) TRIBAL WATER RIGHTS.—The term “tribal
16 water rights” means the water rights of the Tribe
17 described in paragraph 4.0 of the Agreement.

18 (23) TRIBE.—The term “Tribe” means the
19 White Mountain Apache Tribe organized under sec-
20 tion 16 of the Act of June 18, 1934 (commonly
21 known as the “Indian Reorganization Act”) (25
22 U.S.C. 476).

23 (24) WATER RIGHT.—The term “water right”
24 means any right in or to groundwater, surface
25 water, or effluent under Federal, State, or other law.

1 (25) WMAT RURAL WATER SYSTEM.—The
 2 term “WMAT rural water system” means the mu-
 3 nicipal, rural, and industrial water diversion, stor-
 4 age, and delivery system described in section 7.

5 (26) YEAR.—The term “year” means a cal-
 6 endar year.

7 **SEC. 4. APPROVAL OF AGREEMENT.**

8 (a) APPROVAL.—

9 (1) IN GENERAL.—Except to the extent that
 10 any provision of the Agreement conflicts with a pro-
 11 vision of this Act, the Agreement is authorized, rati-
 12 fied, and confirmed.

13 (2) AMENDMENTS.—Any amendment to the
 14 Agreement is authorized, ratified, and confirmed, to
 15 the extent that such an amendment is executed to
 16 make the Agreement consistent with this Act.

17 (b) EXECUTION OF AGREEMENT.—To the extent that
 18 the Agreement does not conflict with this Act, the Sec-
 19 retary shall—

20 (1) execute the Agreement (including signing
 21 any exhibit to the Agreement requiring the signature
 22 of the Secretary); and

23 (2) execute any amendment to the Agreement
 24 necessary to make the Agreement consistent with
 25 this Act.

1 (c) NATIONAL ENVIRONMENTAL POLICY ACT.—

2 (1) ENVIRONMENTAL COMPLIANCE.—In imple-
3 menting the Agreement, the Secretary shall prompt-
4 ly comply with all applicable requirements of—

5 (A) the National Environmental Policy Act
6 of 1969 (42 U.S.C. 4321 et seq.);

7 (B) the Endangered Species Act of 1973
8 (16 U.S.C. 1531 et seq.);

9 (C) all other applicable Federal environ-
10 mental laws; and

11 (D) all regulations promulgated under the
12 laws described in subparagraphs (A) through
13 (C).

14 (2) EXECUTION OF AGREEMENT.—

15 (A) IN GENERAL.—Execution of the Agree-
16 ment by the Secretary under this section shall
17 not constitute a major Federal action under the
18 National Environmental Policy Act of 1969 (42
19 U.S.C. 4321 et seq.).

20 (B) ENVIRONMENTAL COMPLIANCE.—The
21 Secretary shall carry out all necessary environ-
22 mental compliance required by Federal law in
23 implementing the Agreement.

24 (3) LEAD AGENCY.—The Bureau shall serve as
25 the lead agency with respect to ensuring environ-

1 mental compliance associated with the WMAT rural
2 water system.

3 **SEC. 5. WATER RIGHTS.**

4 (a) RIGHTS HELD IN TRUST.—The tribal water
5 rights shall be held in trust by the United States on behalf
6 of Tribe.

7 (b) REALLOCATION.—

8 (1) IN GENERAL.—In accordance with this Act
9 and the Agreement, the Secretary shall reallocate to
10 the Tribe, and offer to enter into a contract with the
11 Tribe for the delivery in accordance with this section
12 of—

13 (A) an annual entitlement to 23,782 acre-
14 feet per year of CAP water that has a non-In-
15 dian agricultural delivery priority (as defined in
16 the Contract) in accordance with section
17 104(a)(1)(A)(iii) of the Arizona Water Settle-
18 ments Act (Public Law 108–451; 118 Stat.
19 3488), of which—

20 (i) 3,750 acre-feet per year shall be
21 firm by the United States for the benefit
22 of the Tribe for the 100-year period begin-
23 ning on January 1, 2008, with priority
24 equivalent to CAP M&I priority water, in

1 accordance with section 105(b)(1)(B) of
2 that Act (118 Stat. 3492); and

3 (ii) 3,750 acre-feet per year shall be
4 firmed by the State for the benefit of the
5 Tribe for the 100-year period beginning on
6 January 1, 2008, with priority equivalent
7 to CAP M&I priority water, in accordance
8 with section 105(b)(2)(B) of that Act (118
9 Stat. 3492); and

10 (B) an annual entitlement to 1,218 acre-
11 feet per year of the water—

12 (i) acquired by the Secretary through
13 the permanent relinquishment of the
14 Harquahala Valley Irrigation District CAP
15 subcontract entitlement in accordance with
16 the contract numbered 3–07–30–W0290
17 among the District, Harquahala Valley Ir-
18 rigation District, and the United States;
19 and

20 (ii) converted to CAP Indian Priority
21 water (as defined in the Contract) pursu-
22 ant to the Fort McDowell Indian Commu-
23 nity Water Rights Settlement Act of 1990
24 (Public Law 101–628; 104 Stat. 4480).

1 (2) AUTHORITY OF TRIBE.—Subject to approval
 2 by the Secretary under section 6(a)(1), the Tribe
 3 shall have the sole authority to lease, distribute, ex-
 4 change, or allocate the tribal CAP water described
 5 in paragraph (1).

6 (c) WATER SERVICE CAPITAL CHARGES.—The Tribe
 7 shall not be responsible for any water service capital
 8 charge for tribal CAP water.

9 (d) ALLOCATION AND REPAYMENT.—For the pur-
 10 pose of determining the allocation and repayment of costs
 11 of any stages of the CAP constructed after November 21,
 12 2007, the costs associated with the delivery of water de-
 13 scribed in subsection (b), regardless of whether the water
 14 is delivered for use by the Tribe or in accordance with
 15 any assignment, exchange, lease, option to lease, or other
 16 agreement for the temporary disposition of water entered
 17 into by Tribe, shall be—

18 (1) nonreimbursable; and

19 (2) excluded from the repayment obligation of
 20 the District.

21 (e) WATER CODE.—Not later than 18 months after
 22 the enforceability date, the Tribe shall enact a water code
 23 that—

24 (1) governs the tribal water rights; and

25 (2) includes, at a minimum—

1 (A) provisions requiring the measurement,
2 calculation, and recording of all diversions and
3 depletions of water on the reservation and on
4 off-reservation trust land;

5 (B) terms of a water conservation plan, in-
6 cluding objectives, conservation measures, and
7 an implementation timeline;

8 (C) provisions requiring the approval of
9 the Tribe for the severance and transfer of
10 rights to the use of water from historically irri-
11 gated land identified in paragraph 11.3.2.1 of
12 the Agreement to diversions and depletions on
13 other non-historically irrigated land not located
14 on the watershed of the same water source; and

15 (D) provisions requiring the authorization
16 of the Tribe for all diversions of water on the
17 reservation and on off-reservation trust land by
18 any individual or entity other than the Tribe.

19 **SEC. 6. CONTRACT.**

20 (a) IN GENERAL.—The Secretary shall enter into the
21 Contract, in accordance with the Agreement, to provide,
22 among other things, that—

23 (1) the Tribe, on approval of the Secretary,
24 may—

1 (A) enter into contracts or options to lease,
2 contracts to exchange, or options to exchange
3 tribal CAP water in Maricopa, Pinal, Pima, and
4 Yavapai Counties in the State providing for the
5 temporary delivery to any individual or entity of
6 any portion of the tribal CAP water, subject to
7 the condition that—

8 (i) the term of the contract or option
9 to lease shall not be longer than 100 years;

10 (ii) the contracts or options to ex-
11 change shall be for the term provided in
12 the contract or option; and

13 (iii) a lease or option to lease pro-
14 viding for the temporary delivery of tribal
15 CAP water shall require the lessee to pay
16 to the Operating Agency all CAP fixed
17 OM&R charges and all CAP pumping en-
18 ergy charges (as defined in the repayment
19 stipulation) associated with the leased
20 water; and

21 (B) renegotiate any lease at any time dur-
22 ing the term of the lease, subject to the condi-
23 tion that the term of the renegotiated lease
24 shall not exceed 100 years;

1 (2) no portion of the tribal CAP water may be
2 permanently alienated;

3 (3)(A) the Tribe (and not the United States in
4 any capacity) shall be entitled to all consideration
5 due to the Tribe under any contract or option to
6 lease or exchange tribal CAP water entered into by
7 the Tribe; and

8 (B) the United States (in any capacity) has no
9 trust or other obligation to monitor, administer, or
10 account for, in any manner—

11 (i) any funds received by the Tribe as con-
12 sideration under a contract or option to lease or
13 exchange tribal CAP water; or

14 (ii) the expenditure of those funds;

15 (4)(A) all tribal CAP water shall be delivered
16 through the CAP system; and

17 (B) if the delivery capacity of the CAP system
18 is significantly reduced or anticipated to be signifi-
19 cantly reduced for an extended period of time, the
20 Tribe shall have the same CAP delivery rights as a
21 CAP contractor or CAP subcontractor that is al-
22 lowed to take delivery of water other than through
23 the CAP system;

24 (5) the Tribe may use tribal CAP water on or
25 off the reservation for any purpose;

1 (6) as authorized by subsection (f)(2)(A) of sec-
 2 tion 403 of the Colorado River Basin Project Act
 3 (43 U.S.C. 1543) and to the extent that funds are
 4 available in the Lower Colorado River Basin Devel-
 5 opment Fund established by subsection (a) of that
 6 section, the United States shall pay to the Operating
 7 Agency the CAP fixed OM&R charges associated
 8 with the delivery of tribal CAP water (except in the
 9 case of tribal CAP water leased by any individual or
 10 entity);

11 (7) the Secretary shall waive the right of the
 12 Secretary to capture all return flow from project ex-
 13 change water flowing from the exterior boundary of
 14 the reservation; and

15 (8) no CAP water service capital charge shall
 16 be due or payable for the tribal CAP water, regard-
 17 less of whether the water is delivered for use by the
 18 Tribe or pursuant to a contract or option to lease
 19 or exchange tribal CAP water entered into by the
 20 Tribe.

21 (b) REQUIREMENTS.—The Contract shall be—

22 (1) for permanent service (within the meaning
 23 of section 5 of the Boulder Canyon Project Act (43
 24 U.S.C. 617d)); and

25 (2) without limit as to term.

1 (c) RATIFICATION.—

2 (1) IN GENERAL.—Except to the extent that
3 any provision of the Contract conflicts with a provi-
4 sion of this Act, the Contract is authorized, ratified,
5 and confirmed.

6 (2) AMENDMENTS.—Any amendment to the
7 Contract is authorized, ratified, and confirmed, to
8 the extent that such an amendment is executed to
9 make the Contract consistent with this Act.

10 (d) EXECUTION OF CONTRACT.—To the extent that
11 the Contract does not conflict with this Act, the Secretary
12 shall execute the Contract.

13 (e) PAYMENT OF CHARGES.—The Tribe, and any re-
14 cipient of tribal CAP water through a contract or option
15 to lease or exchange, shall not be obligated to pay a water
16 service capital charge or any other charge, payment, or
17 fee for CAP water, except as provided in an applicable
18 lease or exchange agreement.

19 (f) PROHIBITIONS.—

20 (1) USE OUTSIDE STATE.—No tribal CAP
21 water may be leased, exchanged, forborne, or other-
22 wise transferred by the Tribe in any way for use di-
23 rectly or indirectly outside the State.

24 (2) USE OFF RESERVATION.—Except as author-
25 ized by this section and paragraph 4.7 of the Agree-

ment, no tribal water rights under this Act may be sold, leased, transferred, or used outside the boundaries of the reservation or off-reservation trust land other than pursuant to an exchange.

(3) AGREEMENTS WITH ARIZONA WATER BANKING AUTHORITY.—Nothing in this Act or the Agreement limits the right of the Tribe to enter into an agreement with the Arizona Water Banking Authority established by section 45–2421 of the Arizona Revised Statutes (or any successor entity), in accordance with State law.

(g) LEASES.—

(1) IN GENERAL.—To the extent the leases of tribal CAP Water by the Tribe to the District and to any of the cities, attached as exhibits to the Agreement, are not in conflict with the provisions of this Act—

(A) those leases are authorized, ratified, and confirmed; and

(B) the Secretary shall execute the leases.

(2) AMENDMENTS.—To the extent that amendments are executed to make the leases described in paragraph (1) consistent with this Act, those amendments are authorized, ratified, and confirmed.

1 **SEC. 7. AUTHORIZATION OF THE RURAL WATER SYSTEM.**

2 (a) IN GENERAL.—Subject to the availability of ap-
3 propriations, the Secretary, acting through the Bureau,
4 shall plan, design, construct, operate, maintain, replace,
5 and rehabilitate the WMAT rural water system as gen-
6 erally described in the project extension report dated Feb-
7 ruary 2007.

8 (b) COMPONENTS.—The WMAT rural water system
9 under subsection (a) shall consist of—

10 (1) a dam and storage reservoir, pumping
11 plant, and treatment facilities located along the
12 North Fork White River near the community of
13 Whiteriver;

14 (2) pipelines extending from the water treat-
15 ment plants to existing water distribution systems
16 serving the Whiteriver, Carrizo, and Cibecue areas,
17 together with other communities along the pipeline;

18 (3) connections to existing distribution facili-
19 ties, including public and private water systems in
20 existence on the date of enactment of this Act;

21 (4) appurtenant buildings and access roads;

22 (5) electrical power transmission and distribu-
23 tion facilities necessary for services to rural water
24 system facilities;

25 (6) all property and property rights necessary
26 for the facilities described in this subsection; and

1 (7) such other project components as the Sec-
2 retary determines to be appropriate to meet the
3 water supply, economic, public health, and environ-
4 mental needs of the portions of the reservation
5 served by the WMAT rural water system, including
6 water storage tanks, water lines, and other facilities
7 for the Tribe and the villages and towns on the res-
8 ervation.

9 (c) SERVICE AREA.—The service area of the WMAT
10 rural water system shall be as described in the Project
11 Extension report dated February 2007.

12 (d) CONSTRUCTION REQUIREMENTS.—The compo-
13 nents of the WMAT rural water system shall be planned
14 and constructed to a size that is sufficient to meet the
15 municipal, rural, and industrial water supply requirements
16 of the WMAT rural water system service area during the
17 period beginning on the date of enactment of this Act and
18 ending not earlier than December 31, 2040.

19 (e) TITLE.—Title to the WMAT rural water system
20 shall be held in trust by the United States in its capacity
21 as trustee for the Tribe.

22 (f) TECHNICAL ASSISTANCE.—The Secretary shall
23 provide such technical assistance as is necessary to enable
24 the Tribe to plan, design, construct, operate, maintain,

1 and replace the WMAT rural water system, including op-
 2 eration and management training.

3 (g) APPLICABILITY OF ISDEAA.—Planning, design,
 4 construction, operation, maintenance, rehabilitation, and
 5 replacement of the WMAT rural water system on the res-
 6 ervation shall be subject to the provisions (including regu-
 7 lations) of the Indian Self-Determination and Education
 8 Assistance Act (25 U.S.C. 450 et seq.).

9 (h) CONDITION.—As a condition of construction of
 10 the facilities authorized by this section, the Tribe shall
 11 provide, at no cost to the Secretary, all land or interests
 12 in land, as appropriate, that the Secretary identifies as
 13 being necessary for those facilities.

14 **SEC. 8. OUTDOOR RECREATION FACILITIES, NATIONAL**
 15 **FISH HATCHERIES, AND EXISTING IRRIGA-**
 16 **TION SYSTEMS.**

17 (a) IN GENERAL.—Subject to the availability of ap-
 18 propriations, on request of the Tribe, the Secretary shall
 19 provide financial and technical assistance to complete the
 20 Hawley Lake, Horseshoe Lake, Reservation Lake, Sunrise
 21 Lake, and Big and Little Bear Lake reconstruction
 22 projects and facilities improvements, as generally de-
 23 scribed in the Bureau report entitled “White Mountain
 24 Apache Tribe Recreation Planning Study—April 2003”.

1 (b) ALCHESAY WILLIAMS CREEK NATIONAL FISH
2 HATCHERY COMPLEX.—

3 (1) IN GENERAL.—Subject to the availability of
4 appropriations, the Secretary shall operate, main-
5 tain, rehabilitate, and upgrade the Alchesay-Wil-
6 liams Creek National Fish Hatchery Complex on the
7 reservation for the continued general and primary
8 benefit of the Tribe and the White Mountain region.

9 (2) COMPLEX REHABILITATION.—The rehabili-
10 tation of, and upgrades to, the complex described in
11 paragraph (1) shall include—

12 (A) raceway construction and rehabilita-
13 tion, water quality improvements, a water recir-
14 culation system, supplemental water treatment
15 capability, equipment acquisition, and building
16 rehabilitation; and

17 (B) capital improvement and deferred
18 maintenance facility needs identified in the re-
19 ports of the United States Fish and Wildlife
20 Service entitled “Facilities Needs Assessment”
21 and “Merrick Report” and dated September
22 2000, as updated through 2008.

23 (c) TRIBE FISHERY CENTER.—Subject to the avail-
24 ability of appropriations, the Secretary shall plan, design,
25 construct, operate, maintain, rehabilitate, and replace a

1 fish grow-out facility, to be known as the “WMAT Fishery
 2 Center”, on the west side of the reservation for the benefit
 3 of the Tribe, consisting of—

- 4 (1) a 10,000 square foot indoor facility;
- 5 (2) circular fiberglass tanks;
- 6 (3) plumbing and required equipment;
- 7 (4) collection and conveyance water systems;
- 8 and
- 9 (5) raceways and ponds.

10 (d) SUNRISE SKI PARK SNOW-MAKING INFRASTRUC-
 11 TURE.—Subject to the availability of appropriations, the
 12 Secretary shall plan, design, and construct snow-making
 13 capacity and infrastructure for Sunrise Ski Park, con-
 14 sisting of—

- 15 (1) enlargement of Ono Lake;
- 16 (2) replacement of snow-making infrastructure,
- 17 as necessary; and
- 18 (3) expansion of snow-making infrastructure
- 19 and capacity to all ski runs on Sunrise Peak, Apache
- 20 Peak, and Cyclone Peak.

21 (e) EXISTING IRRIGATION SYSTEM REHABILITA-
 22 TION.—Subject to the availability of appropriations, the
 23 Secretary shall operate, maintain, rehabilitate, and up-
 24 grade the Canyon Day and other historic irrigation sys-

1 tems on the reservation for the continued general and pri-
 2 mary benefit of the Tribe.

3 (f) APPLICABILITY OF ISDEAA.—Planning, design,
 4 construction, operation, maintenance, rehabilitation, re-
 5 placement, and upgrade of the projects identified in this
 6 section shall be subject to the provisions (including regula-
 7 tions) of the Indian Self-Determination and Education As-
 8 sistance Act (25 U.S.C. 450 et seq.).

9 **SEC. 9. FEASIBILITY STUDY OF NEEDED FOREST PROD-**
 10 **UCTS IMPROVEMENTS.**

11 (a) FEASIBILITY STUDY.—Subject to the availability
 12 of appropriations and pursuant to the provisions (includ-
 13 ing regulations) of the Indian Self-Determination and
 14 Education Assistance Act (25 U.S.C. 450 et seq.), on re-
 15 ceipt of a request by the Tribe, the Secretary shall conduct
 16 a feasibility study of options for—

17 (1) improving the manufacture and use of tim-
 18 ber products derived from commercial forests on the
 19 reservation; and

20 (2) improving forest management practices,
 21 consistent with sustained yield principles for multi-
 22 purpose forest uses, healthy forest initiatives, and
 23 other applicable law to supply raw materials for fu-
 24 ture manufacture and use.

1 (b) REPORT.—Not later than 2 years after the date
 2 of enactment of this Act, the Secretary, with concurrence
 3 of the tribal council of the Tribe, shall submit to Congress
 4 a report describing the results of the feasibility study
 5 under subsection (a), including recommendations of the
 6 Secretary, if any, for the improvements described in that
 7 subsection.

8 (c) IMPLEMENTATION.—Subject to the availability of
 9 appropriations, the Secretary shall plan, design, and con-
 10 struct the improvements recommended under subsection
 11 (b).

12 **SEC. 10. RECREATION IMPOUNDMENTS AND RELATED FA-**
 13 **CILITIES.**

14 Subject to the availability of appropriations, on re-
 15 ceipt of a request by the Tribe and pursuant to the provi-
 16 sions (including regulations) of the Indian Self-Deter-
 17 mination and Education Assistance Act (25 U.S.C. 450
 18 et seq.), the Secretary shall—

19 (1) conduct a feasibility study of recreation im-
 20 poundments throughout the reservation;

21 (2) develop recommendations for the implemen-
 22 tation, by not later than 1 year after the date of en-
 23 actment of this Act, of feasible recreation impound-
 24 ments; and

1 (3) plan, design, and construct any rec-
2 ommended recreation impoundments and related
3 recreation facilities.

4 **SEC. 11. SATISFACTION OF CLAIMS.**

5 (a) IN GENERAL.—The benefits realized by the Tribe
6 and its members under this Act shall be in full satisfaction
7 of all claims of the Tribe and its members for water rights
8 and injury to water rights, except as set forth in the
9 Agreement, under Federal, State, or other law with re-
10 spect to the reservation and off-reservation trust land.

11 (b) USES OF WATER.—All uses of water on lands
12 outside of the reservation, if and when such lands are sub-
13 sequently and finally determined to be part of the reserva-
14 tion through resolution of any dispute between the Tribe
15 and the United States over the location of the reservation
16 boundary, and any fee lands within the reservation put
17 into trust and made part of the reservation, shall be sub-
18 ject to the maximum annual diversion amounts and the
19 maximum annual depletion amounts specified in the
20 Agreement.

21 (c) NO RECOGNITION OF WATER RIGHTS.—Notwith-
22 standing subsection (a), nothing in this Act has the effect
23 of recognizing or establishing any right of a member of
24 the Tribe to water on the reservation.

1 **SEC. 12. WAIVER AND RELEASE OF CLAIMS.**

2 (a) IN GENERAL.—

3 (1) CLAIMS AGAINST THE STATE AND OTH-
 4 ERS.—Except as provided in subparagraph 12.6 of
 5 the Agreement, the Tribe, on behalf of itself and its
 6 members, and the United States, acting in its capac-
 7 ity of trustee for the Tribe and its members as part
 8 of the performance of their obligations under the
 9 Agreement, are authorized to execute a waiver and
 10 release of any claims against the State (or any agen-
 11 cy or political subdivision of the State), or any other
 12 person, entity, corporation, or municipal corporation
 13 under Federal, State, or other law for all—

14 (A)(i) past, present, and future claims for
 15 water rights for the reservation and off-reserva-
 16 tion trust land arising from time immemorial
 17 and, thereafter, forever; and

18 (ii) past, present, and future claims for
 19 water rights arising from time immemorial and,
 20 thereafter, forever, that are based upon aborigi-
 21 nal occupancy of land by the Tribe, its mem-
 22 bers, or their predecessors;

23 (B)(i) past and present claims for injury to
 24 water rights for the reservation and off-reserva-
 25 tion trust land arising from time immemorial
 26 through the enforceability date;

1 (ii) past, present, and future claims for in-
 2 jury to water rights arising from time immemo-
 3 rial and, thereafter, forever, that are based
 4 upon aboriginal occupancy of land by the Tribe
 5 and its members, or their predecessors; and

6 (iii) claims for injury to water rights aris-
 7 ing after the enforceability date for the reserva-
 8 tion and off-reservation trust land resulting
 9 from off-reservation diversion or use of water in
 10 a manner not in violation of the Agreement or
 11 State law; and

12 (C) past, present, and future claims aris-
 13 ing out of or relating in any manner to the ne-
 14 gotiation or execution of the Agreement or the
 15 negotiation or enactment of this Act.

16 (2) CLAIMS AGAINST TRIBE.—Except as pro-
 17 vided in subparagraph 12.8 of the Agreement, the
 18 United States, in all its capacities (except as trustee
 19 for an Indian tribe other than the Tribe), as part of
 20 the performance of its obligations under the Agree-
 21 ment, is authorized to execute a waiver and release
 22 of any and all claims against the Tribe, its members,
 23 or any agency, official, or employee of the Tribe,
 24 under Federal, State, or any other law for all—

1 (A) past and present claims for injury to
 2 water rights resulting from the diversion or use
 3 of water on the reservation and on off-reserva-
 4 tion trust land arising from time immemorial
 5 through the enforceability date;

6 (B) claims for injury to water rights aris-
 7 ing after the enforceability date resulting from
 8 the diversion or use of water on the reservation
 9 and on off-reservation trust land in a manner
 10 not in violation of the Agreement; and

11 (C) past, present, and future claims aris-
 12 ing out of or related in any manner to the nego-
 13 tiation or execution of the Agreement or the ne-
 14 gotiation or enactment of this Act.

15 (3) CLAIMS AGAINST THE UNITED STATES.—
 16 Except as provided in subparagraph 12.7 of the
 17 Agreement, the Tribe, on behalf of itself and its
 18 members, as part of the performance of its obliga-
 19 tions under the Agreement, is authorized to execute
 20 a waiver and release of any claim against the United
 21 States, including agencies, officials, or employees
 22 thereof (except in the United States capacity as
 23 trustee for other tribes), under Federal, State, or
 24 other law for any and all—

1 (A)(i) past, present, and future claims for
2 water rights for the reservation and off-reserva-
3 tion trust land arising from time immemorial
4 and, thereafter, forever; and

5 (ii) past, present, and future claims for
6 water rights arising from time immemorial and,
7 thereafter, forever, that are based on aboriginal
8 occupancy of land by the Tribe and its mem-
9 bers, or their predecessors;

10 (B)(i) past and present claims relating in
11 any manner to damages, losses, or injuries to
12 water, water rights, land, or other resources
13 due to loss of water or water rights (including
14 but not limited to damages, losses or injuries to
15 hunting, fishing, gathering, or cultural rights
16 due to loss of water or water rights; claims re-
17 lating to interference with, diversion or taking
18 of water; or claims relating to failure to protect,
19 acquire, or develop water, water rights or water
20 infrastructure) within the reservation and off-
21 reservation trust land that first accrued at any
22 time prior to the enforceability date;

23 (ii) past, present, and future claims for in-
24 jury to water rights arising from time immemo-
25 rial and, thereafter, forever, that are based on

1 aboriginal occupancy of land by the Tribe and
2 its members, or their predecessors; and

3 (iii) claims for injury to water rights aris-
4 ing after the enforceability date for the reserva-
5 tion and off-reservation trust land resulting
6 from the off-reservation diversion or use of
7 water in a manner not in violation of the Agree-
8 ment or applicable law;

9 (C) past, present, and future claims aris-
10 ing out of or relating in any manner to the ne-
11 gotiation, execution, or adoption of the Agree-
12 ment, an applicable settlement judgment or de-
13 cree, or this Act;

14 (D) past and present claims relating in any
15 manner to pending litigation of claims relating
16 to the Tribe's water rights for the reservation
17 and off-reservation trust land;

18 (E) past and present claims relating to the
19 operation, maintenance, and replacement of ex-
20 isting irrigation systems on the reservation con-
21 structed prior to the enforceability date that
22 first accrued at any time prior to the enforce-
23 ability date, which waiver shall only become ef-
24 fective upon the full appropriation and payment

1 of such funds authorized by section 16(c)(4) to
 2 the Tribe;

3 (F) future claims relating to operation,
 4 maintenance, and replacement of the WMAT
 5 rural water system, which waiver shall only be-
 6 come effective upon the full appropriation of
 7 funds authorized by section 16(b) and their de-
 8 posit into the Rural Water System OM&R
 9 Fund; and

10 (G) past, present, and future breach of
 11 trust and negligence claims for damage to the
 12 natural resources of the Tribe caused by ripar-
 13 ian and other vegetative manipulation, includ-
 14 ing over-cutting of forest resources by the
 15 United States for the purpose of increasing
 16 water runoff from the reservation.

17 (4) NO WAIVER OF CLAIMS.—Nothing in this
 18 subsection waives any claim of the Tribe against the
 19 United States for future takings by the United
 20 States of reservation land or off-reservation trust
 21 land or property rights appurtenant to those lands,
 22 including any water rights set forth in paragraph
 23 4.0 of the Agreement.

24 (b) EFFECTIVENESS OF WAIVER AND RELEASES.—
 25 Except where otherwise specifically provided in subpara-

1 graphs (E) and (F) of subsection (a)(3), the waivers and
 2 releases under subsection (a) shall become effective on the
 3 enforceability date.

4 (c) ENFORCEABILITY DATE.—

5 (1) IN GENERAL.—This section takes effect on
 6 the date on which the Secretary publishes in the
 7 Federal Register a statement of findings that—

8 (A) to the extent the Agreement conflicts
 9 with this Act, the Agreement has been revised
 10 through an amendment to eliminate the conflict
 11 and the Agreement, so revised, has been exe-
 12 cuted by the Secretary, the Tribe and the Gov-
 13 ernor of the State;

14 (B) the Secretary has fulfilled the require-
 15 ments of sections 5 and 6;

16 (C)(i) the funds authorized in sections 13
 17 and 16(a), have been appropriated and depos-
 18 ited in the Rural Water System Construction
 19 Fund; and

20 (ii) if applicable, the funds described in
 21 section 16(i) have been deposited in the Rural
 22 Water System Construction Fund;

23 (D) the State funds described in subpara-
 24 graph 13.3 of the Agreement have been depos-

1 ited in the Rural Water System Construction
2 Fund;

3 (E) the Secretary has issued a record of
4 decision approving the construction of the
5 WMAT rural water system in a configuration
6 substantially similar to that described in section
7 7; and

8 (F) the judgments and decrees substan-
9 tially in the form of those attached to the
10 Agreement as exhibits 12.9.6.1 and 12.9.6.2
11 have been approved by the respective trial
12 courts.

13 (2) FAILURE OF ENFORCEABILITY DATE TO
14 OCCUR.—If, because of the failure of the enforce-
15 ability date to occur by October 31, 2013, this sec-
16 tion does not become effective, the Tribe and its
17 members, and the United States, acting in the ca-
18 pacity of trustee for the Tribe and its members,
19 shall retain the right to assert past, present, and fu-
20 ture water rights claims and claims for injury to
21 water rights for the reservation and off-reservation
22 trust land.

23 (3) NO RIGHTS TO WATER.—Upon the occur-
24 rence of the enforceability date, all land held by the
25 United States in trust for the Tribe and its members

1 shall have no rights to water other than those spe-
 2 cifically quantified for the Tribe and the United
 3 States, acting in the capacity of trustee for the
 4 Tribe and its members for the reservation and off-
 5 reservation trust land pursuant to paragraph 4.0 of
 6 the Agreement.

7 (d) UNITED STATES ENFORCEMENT AUTHORITY.—
 8 Nothing in this Act or the Agreement affects any right
 9 of the United States to take any action, including environ-
 10 mental actions, under any laws (including regulations and
 11 the common law) relating to human health, safety, or the
 12 environment.

13 **SEC. 13. USE OF LOWER COLORADO RIVER BASIN DEVEL-**
 14 **OPMENT FUND.**

15 (a) USE OF AMOUNTS.—

16 (1) IN GENERAL.—Subject to paragraph (2), up
 17 to \$100,000,000 of amounts in the Lower Colorado
 18 River Basin Development Fund made available
 19 under section 403(f)(2)(D)(vi) of the Colorado River
 20 Basin Project Act (43 U.S.C. 1543(f)(2)(D)(vi))
 21 may be used, without further appropriation, for the
 22 planning, engineering, design, and construction of
 23 the WMAT rural water system.

24 (2) REQUIREMENT.—If a loan is made to the
 25 Tribe pursuant to the White Mountain Apache Tribe

1 Rural Water System Loan Authorization Act (Public
 2 Law 110–390; 122 Stat. 4191), the Tribe shall use
 3 such amounts made available under paragraph (1)
 4 as are necessary to repay that loan.

5 (b) OFFSET.—To the extent necessary, the Secretary
 6 shall offset amounts expended pursuant to subsection (a)
 7 using such additional amounts as may be made available
 8 to the Secretary for the applicable fiscal year.

9 **SEC. 14. TRUST FUNDS.**

10 (a) ESTABLISHMENT.—There is established in the
 11 Treasury of the United States—

12 (1) a fund to be known as the “Rural Water
 13 System Construction Fund”, consisting of—

14 (A) the funds made available under section
 15 13;

16 (B) the amounts appropriated to the fund
 17 pursuant to subsections (a) and (i) of section
 18 16, as applicable; and

19 (C) the funds provided in subparagraph
 20 13.3 of the Agreement; and

21 (2) a fund to be known as the “Rural Water
 22 System OM&R Fund”, consisting of amounts appro-
 23 priated to the fund pursuant to section 16(b).

1 (b) MANAGEMENT.—The Secretary shall manage the
 2 Rural Water System Construction Fund and the Rural
 3 Water System OM&R Fund, including by—

- 4 (1) making investments from the funds; and
- 5 (2) distributing amounts from the funds to the
 6 Tribe, in accordance with the American Indian
 7 Trust Fund Management Reform Act of 1994 (25
 8 U.S.C. 4001 et seq.).

9 (c) INVESTMENT OF FUNDS.—The Secretary shall in-
 10 vest amounts in the funds in accordance with—

- 11 (1) the Act of April 1, 1880 (25 U.S.C. 161);
- 12 (2) the first section of the Act of June 24,
 13 1938 (25 U.S.C. 162a);
- 14 (3) subsection (b);
- 15 (4) the obligations of Federal corporations and
 16 Federal Government-sponsored entities the charter
 17 documents of which provide that the obligations of
 18 the entities are lawful investments for federally man-
 19 aged funds, including—

- 20 (A) the obligations of the United States
 21 Postal Service described in section 2005 of title
 22 39, United States Code;

- 23 (B) bonds and other obligations of the
 24 Tennessee Valley Authority described in section

1 15d of the Tennessee Valley Authority Act of
 2 1933 (16 U.S.C. 831n-4);

3 (C) mortgages, obligations, and other secu-
 4 rities of the Federal Home Loan Mortgage Cor-
 5 poration described in section 303 of the Federal
 6 Home Loan Mortgage Corporation Act (12
 7 U.S.C. 1452); and

8 (D) bonds, notes, and debentures of the
 9 Commodity Credit Corporation described in sec-
 10 tion 4 of the Act of March 8, 1938 (15 U.S.C.
 11 713a-4); and

12 (5) the obligations referred to in section 201 of
 13 the Social Security Act (42 U.S.C. 401).

14 (d) EXPENDITURES AND WITHDRAWALS.—

15 (1) TRIBAL MANAGEMENT PLANS.—

16 (A) IN GENERAL.—The Tribe may with-
 17 draw any portion of the Rural Water System
 18 Construction Fund or the Rural Water System
 19 OM&R Fund on approval by the Secretary of a
 20 tribal management plan under the American In-
 21 dian Trust Fund Management Reform Act of
 22 1994 (25 U.S.C. 4001 et seq.).

23 (B) REQUIREMENTS.—In addition to the
 24 requirements under that Act (25 U.S.C. 4001

et seq.), the tribal management plan shall require that the Tribe shall—

(i) use amounts in the Rural Water System Construction Fund only for the planning, design, and construction of the rural water system, including such sums as are necessary—

(I) for the Bureau to carry out oversight of the planning, design, and construction of the rural water system; and

(II) to carry out all required environmental compliance activities associated with the planning, design, and construction of the rural water system; and

(ii) use amounts in the Rural Water System OM&R Fund only for the operation, maintenance, and replacement costs associated with the delivery of water through the rural water system.

(2) ENFORCEMENT.—The Secretary may pursue such judicial remedies and carry out such administrative actions as are necessary to enforce the tribal management plan to ensure that amounts in

1 the Rural Water System Construction Fund and the
 2 Rural Water System OM&R Fund are used in ac-
 3 cordance with this section.

4 (3) LIABILITY.—On withdrawal by the Tribe of
 5 amounts in the Rural Water System Construction
 6 Fund or the Rural Water System OM&R Fund, the
 7 Secretary and the Secretary of the Treasury shall
 8 not retain liability for the expenditure or investment
 9 of those amounts.

10 (4) EXPENDITURE PLAN.—

11 (A) IN GENERAL.—The Tribe shall submit
 12 to the Secretary for approval an expenditure
 13 plan for any portion of the amounts in the
 14 funds under this section that the Tribe does not
 15 withdraw pursuant to this subsection.

16 (B) DESCRIPTION.—The expenditure plan
 17 shall describe the manner in which, and the
 18 purposes for which, the amounts remaining in
 19 the funds will be used.

20 (C) APPROVAL.—The Secretary shall ap-
 21 prove an expenditure plan under this paragraph
 22 if the Secretary determines that the plan is—

23 (i) reasonable; and

24 (ii) consistent with this Act.

1 (5) ANNUAL REPORTS.—The Tribe shall submit
 2 to the Secretary an annual report that describes
 3 each expenditure from the Rural Water System Con-
 4 struction Fund and the Rural Water System OM&R
 5 Fund during the year covered by the report.

6 (e) PROHIBITION ON PER CAPITA DISTRIBUTIONS.—
 7 No amount of the principal, or the interest or income ac-
 8 cruing on the principal, of the Rural Water System Con-
 9 struction Fund or the Rural Water System OM&R Fund
 10 shall be distributed to any member of the Tribe on a per
 11 capita basis.

12 (f) FUNDS NOT AVAILABLE UNTIL ENFORCEABILITY
 13 DATE.—Amounts in the Rural Water System Construc-
 14 tion Fund and the Rural Water System OM&R Fund shall
 15 not be available for expenditure or withdrawal by the
 16 Tribe until the enforceability date.

17 **SEC. 15. MISCELLANEOUS PROVISIONS.**

18 (a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—

19 (1) IN GENERAL.—In the case of a civil action
 20 described in paragraph (2)—

21 (A) the United States or the Tribe, or
 22 both, may be joined in the civil action; and

23 (B) any claim by the United States or the
 24 Tribe to sovereign immunity from the civil ac-
 25 tion is waived for the sole purpose of resolving

1 any issue regarding the interpretation or en-
2 forcement of this Act or the Agreement.

3 (2) DESCRIPTION OF CIVIL ACTION.—A civil ac-
4 tion referred to in paragraph (1) is a civil action
5 filed—

6 (A) by any party to the Agreement or sig-
7 natory to an exhibit to the Agreement in a
8 United States or State court that—

9 (i) relates solely and directly to the in-
10 terpretation or enforcement of this Act or
11 the Agreement; and

12 (ii) names as a party the United
13 States or the Tribe; or

14 (B) by a landowner or water user in the
15 Gila River basin or Little Colorado River basin
16 in the State that—

17 (i) relates solely and directly to the in-
18 terpretation or enforcement of paragraph
19 12.0 of the Agreement; and

20 (ii) names as a party the United
21 States or the Tribe.

22 (b) EFFECT OF ACT.—Nothing in this Act quantifies
23 or otherwise affects any water right or claim or entitle-
24 ment to water of any Indian tribe, band, or community
25 other than the Tribe.

1 (c) LIMITATION ON LIABILITY OF UNITED
2 STATES.—

3 (1) IN GENERAL.—The United States shall
4 have no trust or other obligation—

5 (A) to monitor, administer, or account for,
6 in any manner, any amount paid to the Tribe
7 by any party to the Agreement other than the
8 United States; or

9 (B) to review or approve the expenditure of
10 those funds.

11 (2) INDEMNIFICATION.—The Tribe shall indem-
12 nify the United States, and hold the United States
13 harmless, with respect to any claim (including claims
14 for takings or breach of trust) arising out of the re-
15 ceipt or expenditure of funds described in paragraph
16 (1)(A).

17 (d) APPLICABILITY OF RECLAMATION REFORM
18 ACT.—The Reclamation Reform Act of 1982 (43 U.S.C.
19 390aa et seq.) and any other acreage limitation or full-
20 cost pricing provision under Federal law shall not apply
21 to any individual, entity, or land solely on the basis of—

22 (1) receipt of any benefit under this Act;

23 (2) the execution of this Act; or

24 (3) the use, storage, delivery, lease, or exchange
25 of CAP water.

1 (e) TREATMENT OF TRIBAL WATER RIGHTS.—The
 2 tribal water rights—

3 (1) shall be held in trust by the United States
 4 in perpetuity; and

5 (2) shall not be subject to forfeiture or aban-
 6 donment.

7 (f) SECRETARIAL POWER SITES.—The portions of
 8 the following named secretarial power site reserves that
 9 are located on the reservation shall be transferred and re-
 10 stored into the name of the Tribe:

11 (1) Lower Black River (T. 3 N., R. 26 E.; T.
 12 3 N., R. 27 E.).

13 (2) Black River Pumps (T. 2 N., R. 25 E.; T.
 14 2 N., R. 26 E.; T. 3 N., R. 26 E.).

15 (3) Carrizo (T. 4 N., R. 20 E.; T. 4 N., R. 21
 16 E.; T. 4½ N., R. 19 E.; T. 4½ N., R. 20 E.; T.
 17 4½ N., R. 21 E.; T. 5 N., R. 19 E.).

18 (4) Knob (T. 5 N., R. 18 E.; T. 5 N., R. 19
 19 E.).

20 (5) Walnut Canyon (T. 5 N., R. 17 E.; T. 5 N.,
 21 R. 18 E.).

22 (6) Gleason Flat (T. 4½ N., R. 16 E.; T. 5 N.,
 23 R. 16 E.).

24 (g) NO EFFECT ON FUTURE ALLOCATIONS.—Water
 25 received under a lease or exchange of tribal CAP water

1 under this Act shall not affect any future allocation or
 2 reallocation of CAP water by the Secretary.

3 (h) AFTER-ACQUIRED TRUST LANDS.—

4 (1) REQUIREMENT OF ACT OF CONGRESS.—

5 (A) LEGAL TITLE.—After the enforce-
 6 ability date, if the Tribe seeks to have legal title
 7 to additional land in the State of Arizona lo-
 8 cated outside the exterior boundaries of the res-
 9 ervation taken into trust by the United States
 10 for its benefit, the Tribe may do so only pursu-
 11 ant to an Act of Congress specifically author-
 12 izing the transfer for the benefit of the Tribe.

13 (B) EXCEPTIONS.—Subparagraph (A)
 14 shall not apply to—

15 (i) restoration of land to the reserva-
 16 tion subsequently and finally determined to
 17 be part of the reservation through resolu-
 18 tion of any dispute between the Tribe and
 19 the United States over the location of the
 20 reservation boundary unless required by
 21 Federal law; or

22 (ii) off-reservation trust land acquired
 23 prior to January 1, 2008.

24 (2) WATER RIGHTS.—

1 (A) IN GENERAL.—Under this section,
 2 after-acquired trust land outside the reservation
 3 shall not include federally reserved rights to
 4 surface water or groundwater.

5 (B) RESTORED LAND.—Land restored to
 6 the reservation as the result of resolution of any
 7 reservation boundary dispute between the Tribe
 8 and the United States, or any fee simple land
 9 within the reservation that are placed into
 10 trust, shall have water rights pursuant to sec-
 11 tion 11(b).

12 (3) ACCEPTANCE OF LAND IN TRUST STATUS.—

13 (A) IN GENERAL.—If the Tribe acquires
 14 legal fee title to land that is located within the
 15 exterior boundaries of the reservation, the Sec-
 16 retary shall accept the land in trust status for
 17 the benefit of the Tribe in accordance with ap-
 18 plicable Federal law (including regulations) for
 19 such real estate acquisitions.

20 (B) RESERVATION STATUS.—Land taken
 21 or held in trust by the Secretary under para-
 22 graph (3), or restored to the reservation as a
 23 result of resolution of a boundary dispute be-
 24 tween the Tribe and the United States, shall be
 25 deemed to be part of the reservation.

1 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) RURAL WATER SYSTEM.—

3 (1) PLANNING, ENGINEERING, DESIGN, AND
4 CONSTRUCTION.—

5 (A) IN GENERAL.—There is authorized to
6 be appropriated for the planning, engineering,
7 design, and construction of the WMAT rural
8 water system \$126,193,000, as adjusted in ac-
9 cordance with subparagraph (B), less—

10 (i) the amount of funding applied to-
11 ward the planning, engineering, design,
12 and construction of the WMAT rural water
13 system under section 13; and

14 (ii) the funds to be provided under
15 subparagraph 13.3 of the Agreement.

16 (B) ADJUSTMENTS AND INCLUSIONS.—
17 The amount authorized to be appropriated
18 under subparagraph (A) shall—

19 (i) be adjusted as may be required
20 due to changes in construction costs of the
21 rural water system, as indicated by engi-
22 neering cost indices applicable to the types
23 of planning, engineering, design, and con-
24 struction occurring after October 1, 2007;
25 and

1 (ii) include such sums as are nec-
 2 essary for the Bureau to carry out over-
 3 sight of activities for planning, design, and
 4 construction of the rural water system.

5 (2) ENVIRONMENTAL COMPLIANCE.—There are
 6 authorized to be appropriated to the Secretary such
 7 sums as are necessary to carry out all required Fed-
 8 eral environmental compliance activities associated
 9 with the planning, engineering, design, and construc-
 10 tion of the rural water system.

11 (b) RURAL WATER SYSTEM OM&R.—There is au-
 12 thorized to be appropriated \$50,000,000 for the operation,
 13 maintenance, and replacement costs of the rural water
 14 system.

15 (c) REHABILITATION OF RECREATION FACILITIES,
 16 NATIONAL FISH HATCHERIES, AND EXISTING IRRIGA-
 17 TION SYSTEMS.—There are authorized to be appropriated,
 18 for use in accordance with section 8—

19 (1) \$23,675,000 to complete the Hawley Lake,
 20 Horseshoe Lake, Reservation Lake, Sunrise Lake,
 21 and Big and Little Bear Lake reconstruction
 22 projects and facilities improvements;

23 (2) \$7,472,000 to the United States Fish and
 24 Wildlife Service for the rehabilitation and improve-

1 ment of the Alchesay-Williams Creek National Fish
2 Hatchery Complex;

3 (3) \$5,000,000 to the Bureau of Indian Affairs
4 for the planning, design, and construction of the
5 WMAT Fishery Center; and

6 (4) for the rehabilitation of existing irrigation
7 systems—

8 (A) \$950,000 for the Canyon Day irriga-
9 tion system; and

10 (B) \$4,000,000 for the Historic irrigation
11 system.

12 (d) FEASIBILITY STUDY OF NEEDED FOREST PROD-
13 UCTS IMPROVEMENTS.—There are authorized to be appro-
14 priated—

15 (1) to the Bureau of Indian Affairs \$1,000,000
16 to conduct a feasibility study of the rehabilitation
17 and improvement of forest products manufacturing
18 and forest management on the reservation in accord-
19 ance with section 9; and

20 (2) \$24,000,000 to implement the recommenda-
21 tions developed under the study.

22 (e) SUNRISE SKI PARK SNOW-MAKING INFRASTRUC-
23 TURE.—There is authorized to be appropriated
24 \$25,000,000 for the planning, design, and construction of

1 snow-making infrastructure, repairs, and expansion at
2 Sunrise Ski Park in accordance with section 8.

3 (f) RECREATION IMPOUNDMENTS AND RELATED FA-
4 CILITIES.—There is authorized to be appropriated
5 \$25,000,000 to carry out section 10.

6 (g) ENVIRONMENTAL COMPLIANCE.—There are au-
7 thorized to be appropriated to the Secretary such sums
8 as are necessary to carry out all required environmental
9 compliance activities associated with the Agreement and
10 this Act.

11 (h) COST INDEXING.—The amounts authorized to be
12 appropriated under this section shall be adjusted as appro-
13 priate, based on ordinary fluctuations in engineering cost
14 indices applicable for the relevant types of construction,
15 if any, during the period beginning on October 1, 2007,
16 and ending on the date on which the amounts are made
17 available.

18 (i) EMERGENCY FUND FOR INDIAN SAFETY AND
19 HEALTH.—Effective beginning on January 1, 2010, if the
20 Secretary determines that, on an annual basis, the dead-
21 line described in section 12(c)(2) is not likely to be met
22 because the funds authorized in sections 13 and 16(a)
23 have not been appropriated and deposited in the Rural
24 Water System Construction Fund, not more than
25 \$100,000,000 of the amounts in the Emergency Fund for

1 Indian Safety and Health established by section 601(a)
 2 of the Tom Lantos and Henry J. Hyde United States
 3 Global Leadership Against HIV/AIDS, Tuberculosis, and
 4 Malaria Reauthorization Act of 2008 (22 U.S.C. 7601 et
 5 seq.) shall be transferred to the Rural Water System Con-
 6 struction Fund, as necessary to complete the WMAT rural
 7 water system project.

8 **SEC. 17. ANTIDEFICIENCY.**

9 The United States shall not be liable for failure to
 10 carry out any obligation or activity authorized to be car-
 11 ried out, subject to appropriations, under this Act (includ-
 12 ing any such obligation or activity under the Agreement)
 13 if adequate appropriations for that purpose are not pro-
 14 vided by Congress.

15 **SEC. 18. REPEAL ON FAILURE OF ENFORCEABILITY DATE.**

16 If the Secretary fails to publish in the Federal Reg-
 17 ister a statement of findings as required under section
 18 12(c) by not later than October 31, 2013—

19 (1) effective beginning on November 1, 2013—

20 (A) this Act is repealed; and

21 (B) any action carried out by the Sec-
 22 retary, and any contract entered into, pursuant
 23 to this Act shall be void;

24 (2) any amounts appropriated under sections
 25 13 and subsections (a) and (b) of section 16, to-

1 gether with any interest accrued on those amounts,
2 shall immediately revert to the general fund of the
3 Treasury; and

4 (3) any amounts paid by the State in accord-
5 ance with the Agreement, together with any interest
6 accrued on those amounts, shall immediately be re-
7 turned to the State.

8 **SEC. 19. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

9 In carrying out this Act, the Secretary shall promptly
10 comply with all applicable requirements of—

11 (1) the National Environmental Policy Act of
12 1969 (42 U.S.C. 4321 et seq.);

13 (2) the Endangered Species Act of 1973 (16
14 U.S.C. 1531 et seq.);

15 (3) all other applicable Federal environmental
16 laws; and

17 (4) all regulations promulgated under the laws
18 described in paragraphs (1) through (3).

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